

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Benjamin Heyward

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

Bryan P. Stirling

David W. Dunlap

MS. A. Price

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

**Complaint for Violation of Civil
Rights**
(Prisoner Complaint)

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: Yes No
(check one)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

When submitted for filing, your complaint should be accompanied by the full filing fee or an application to proceed in *forma pauperis*.

1. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Benjamin Heyward

All other names by which you have been known:

ID Number

165514

Current Institution

Kershaw Correctional institution,

Address

4848 Goldmine Hwy, Kershaw, SC

29067.

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Mr. Bryan P. Stirling

Job or Title

SCDC Director

(if known)

Shield Number

unknown

Employer

South Carolina Dept of Corrections

Address

44444 Broad River Road

Columbia, SC 29210

Individual capacity

Official capacity

Defendant No. 2

Name

Mr. David W. Dunlap

Job or Title (if known) warden, Retired
 Shield Number
 Employer
 Address Last known Address:
Kershaw Correctional institution
4848 Goldmine Hwy
Kershaw SC 29067

Individual capacity Official capacity

Defendant No. 3

Name M.S.A. Price
 Job or Title (if known) Lieutenant
 Shield Number # CD25423
 Employer Kershaw Correctional institution
 Address 4848 Goldmine Hwy
Kershaw, SC 29067

Individual capacity Official capacity

Defendant No. 4

Name _____
 Job or Title (if known) _____
 Shield Number _____
 Employer _____
 Address _____

Individual capacity Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (*check all that apply*):

Federal officials (a *Bivens* claim)
 State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Fourth, Eighth, and Fourteenth Amendments.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

X

D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Lt. Price acted under color of state law, when she use excessive force by spraying pepper spray into my Face, while I was standing at the Control booth Flg.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

Pretrial detainee
 Civilly committed detainee
 Immigration detainee

continue page 4-D:

Warden Dunlap acted under the color of state law by being the warden of Kershaw Correctional institution. He is legally responsible for the operation of Kershaw Correctional institution, for the conduct of the officers, and for the welfare of all the inmates of the prison.

Director Stirling acted under the color of state law by being the director of the state of South Carolina. He is legally responsible for the overall operation of the department and each institution under its jurisdiction, including Kershaw Correctional institution, where plaintiff are confined.

Convicted and sentenced state prisoner
 Convicted and sentenced federal prisoner
 Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

X

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Kershaw Correctional institution, Goldmine Hwy, Kershaw, SC
29067, In hickory unit at the Central booth flap, on 4-13-2017,
Approximated one P.M.

C. What date and approximate time did the events giving rise to your claim(s) occur?

April 13, 2017, Approximated one P.M.

D. What are the facts underlying your claim(s)? (For example: *What happened to you? Who did what? Was anyone else involved? Who else saw what happened?*)

see Attached

continue -D) pages 5.

- 1.) on 4-13-2017, I went into hickory unit Sallyport and I asked unit counselor Mr. R. Truesdale to tell inmate Patrick Brown "Head ward keeper" to give some cleaning chemical because I needed to clean my cell.
- 2.) Mr. Truesdale told me unit manager, "Lieutenant" Price was in the control booth, I must ask her.
- 3.) I went to the control booth flap and I asked Lt. Price to tell inmate Brown to give me some cleaning chemical because I needed to clean my cell.
- 4.) Lt. Price yelled at me and told me I wasn't getting any cleaning chemical. I then told Lt. Price I was going to write her up, and she yelled and told me she don't fuckin care, and I needed to get my black ass away from the control booth flap.
- 5.) I told Lt. Price, she needed to stopped acting like a bitch. Lt. Price then came from around the control booth panel, to the control booth flap, and sprayed pepper spray into my face, eyes, nose and mouth.
- 6.) when I removed my face away from the control booth flap, some pepper spray almost went on Mr. Truesdale.
- 7.) Lt. Price got on the radio, and told the yard officer, she sprayed me with pepper spray because I called her a bitch.
- 8.) Lt. Price used excessive force against me when she sprayed pepper spray into my face because I told her she needed to stopped acting like a bitch.
- 9.) There was a physical barrier between her and I in the form of the control booth's concrete block and glass barred wall which prevented me any opportunity for possible physical violence against her, without threat or possible threat of violence to her person, she is unjustified in her response to me in this case.

Continue D, page 5

- 10.) After being sprayed with pepper spray, I was escorted by Mr. Truesdale to medical to be treated. At medical Mr. Truesdale told my mental Health Counselor Ms. Gardner, and nurse Cappadonia, Lt Price and I was arguing over Cleaning Chemical and Lt. Price sprayed me with pepper spray through the control booth Flap. nurse Cappadonia then told me I shouldn't been aggressive at the Flap.
- 11.) After being treated by nurse Cappadonia, I was escorted by Mr. Truesdale to the holding cell in the administration building.
- 12.) while in the holding cell, Mr. Ford, "Major" came and spoke to me about the incident when I told major Ford, Lt Price sprayed me with pepper spray because I told her she needed to stopped acting like a bitch. major Ford went to hickory unit and spoke with Lt Price about the incident. major Ford thought Lt. Price sprayed me with pepper spray on the wing, not through the control booth Flap.
- 13.) After being in the holding cell approximattly five hours, Captain Goodwin, and Sergeant Tapp came and took me to the restricted Housing unit, better known as "Lock-up", in a one man cell.
- 14.) As I was being escorted by Captain Goodwin and Sergeant Tapp through the administration building, by the control booth, Ms. Easton, "Officer", told me if I had called her a bitch, she would had sprayed me with pepper spray too.
- 15.) on 4-17-2017, while on Lock up, warden Dunlap came and spoke to me about the incident regrading Lt. Price. I gave warden Dunlap my statement about the incident and he told me he would gave it to the right people. I never heard anything about my statement or anyone else.

continue -D, page 5

- 16.) on 4-17-2017, while being on Lock up, I was being escorted from the shower by Mr. Ellis, Corporal, when he told me Lt. Price is now saying I placed my arm into the Control booth Flap, and I tried to throw a substance on her, and I threaten to harm her. that's why she sprayed me with pepper spray.
- 17.) on 4-27-2017, while being on Lock up, Major Ford came and he told me he signed an incident report from Lt. Price, stating I placed my arm into the Control booth Flap and I tried to throw a substance on her and I threaten to harm her.
- 18.) I told Major Ford I never received the charge, someone higher than the Major stopped the charge because they knew Lt. Price was being dishonest about the incident.
- 19.) on 5-3-2017, I was placed back into general population with Lt. Price, after being on Lock up for twenty days without a charge.
- 20.) Lt. Price is unjustified for spraying me with pepper spray through the Control booth Flap, because I told her, she needed to stop acting like a bitch.
- 21.) As a direct and approximate result of the grossly negligent and reckless acts of Lt. Price, I were injured and damaged and are entitled to actual and punitive damages.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Eyes burned approximated one hour; eyes swollen for three days; headache for seven days; chest pain for five days; and mental and emotional injuries for seven days.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Actual damages in the amount of three hundred thousand dollars against each defendant; punitive damages in the amount of three hundred thousand dollars against each defendant. Lt. Price used excessive force when she sprayed pepper spray into my face for telling her she needed to stop acting like a bitch.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes

No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Kershaw Correctional institution, 4948 Goldmine Hwy,
Kershaw, SC 29067

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes

No

Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes

No

Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes
 No

E. If you did file a grievance:

1. Where did you file the grievance?

Step one grievance at Kershaw Correctional institution.
Step two grievance at (SCDC) South Carolina Dept of Corrections.

2. What did you claim in your grievance?

stated the incident, and requested for \$200,000 for compensatory damages, and \$200,000 for punitive damages.

3. What was the result, if any?

Step one and step two grievances denied.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Grievances completed at SCDC Level.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

X

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

X

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

X

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes
 No

If so, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

X

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit

Plaintiff(s) X

Defendant(s) _____

2. Court (*if federal court, name the district; if state court, name the county and State*)

X

3. Docket or index number

X

4. Name of Judge assigned to your case

X

5. Approximate date of filing lawsuit

X

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. X

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

X

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Yes
 No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) Benjamin Heyward
 Defendant(s) South Carolina Dept of Corrections

2. Court (if federal court, name the district; if state court, name the county and State)

state Court, Lancaster County,

3. Docket or index number

2017-C.P-00305

4. Name of Judge assigned to your case

Judge Brian M. Gibbons

5. Approximate date of filing lawsuit

March 14, 2017

6. Is the case still pending?

Yes
 No

continue page 1b D.

1.) parties to the previous lawsuit:

plaintiff: Benjamin Heyward

Defendant: Bryant P. Stirling; David W. Dunlap; and Mrs. A. Price.

2.) Court: state Court, Lancaster County.

3.) Docket #: 2017-CP-29-01073

4.) Judge name: unknown.

5.) Filing date: 10-13-17

6.) still pending: NO.

7.) Result of case: dismissed, wasn't able to pay \$150.00 Filing Fee.

If no, give the approximate date of disposition. X

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

X

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 1-16, 2018

Signature of Plaintiff Benjamin Heyward
 Printed Name of Plaintiff Benjamin Heyward
 Prison Identification # 165514
 Prison Address Kershaw Correctional institution, 4848 Goldmine Hwy, Kershaw, SC 29067
 City _____ State _____ Zip Code _____

B. For Attorneys

Date of signing: _____, 20__.

Signature of Attorney X
 Printed Name of Attorney X
 Bar Number X
 Name of Law Firm X

Address	<input checked="" type="checkbox"/>
Telephone Number	<input checked="" type="checkbox"/>
E-mail Address	<input checked="" type="checkbox"/>